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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY LITTLE,

Defendant and Appellant.

B221029

(Los Angeles County  
Super. Ct. No. BA348010)

THE COURT:\*

Mark Anthony Little appeals from the judgment entered upon his conviction of possession of a controlled substance for sale (Health & Saf. Code, § 11351)<sup>1</sup> upon his plea of no contest. The trial court sentenced appellant to the middle term of three years in state prison, awarding 352 days of presentence custody credit and 176 days of conduct credit. Appellant filed this appeal without obtaining a certificate of probable cause.

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\* DOI TODD Acting P. J., ASHMANN-GERST, J., CHAVEZ, J.

<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise indicated.

## PROCEDURAL AND FACTUAL BACKGROUND<sup>2</sup>

On November 17, 2008, the district attorney filed a two-count information, charging appellant with sale/transportation/offer to sell a controlled substance (§ 11352, subd. (a)) and possession for sale of cocaine base (§ 11351.5). A third count of possession for sale of a controlled substance was added by amendment. The information also alleged that appellant suffered prior felony convictions within the meaning of section 11370.2, subdivision (a), a prior felony strike within the meaning of Penal Code sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d) and a prior prison term within the meaning of Penal Code section 667.5, subdivision (b).

The facts out of which the charges arose are as follows: On October 20, 2008, at approximately 1:25 p.m., undercover police Officer Alonzo Williams was at a location on Stanford Avenue, in the County of Los Angeles. He encountered appellant, who sold the officer three off-white solids resembling rock cocaine in return for a prerecorded \$20 bill. On appellant's arrest, four additional off-white solids, a Ziploc baggie with green leafy plant resembling marijuana and a glass pipe were taken from his fanny pack. Chemical analysis established that the off-white substances recovered were .92 grams of cocaine base. Officer Williams opined that the cocaine base was possessed for sale based on terminology used by appellant at the time of sale and the sale to the officer.

Appellant made a *Marsden*<sup>3</sup> request which was denied. Defense counsel was subsequently relieved after declaring a conflict and new counsel appointed. However, before new counsel engaged in any proceedings, appellant filed a *Faretta*<sup>4</sup> motion for self-representation, which was granted.

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<sup>2</sup> Because this matter was resolved by plea, we take the facts from the preliminary hearing transcript.

<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

<sup>4</sup> *Faretta v. California* (1975) 422 U.S. 806.

Appellant thereafter waived his trial rights and pled no contest to a charge of possessing cocaine for sale (§ 11351). The trial court sentenced him to a state prison term of three years, and awarded him 528 days of presentence credit.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised.

On April 12, 2010, appellant filed a “Supplemental Opening Brief,” along with a Petition for Writ of Habeas Corpus (Petition).<sup>5</sup> In the supplemental brief, we interpret appellant’s claims to be the following: (1) ineffective assistance of appellate counsel for failing to raise the “arguable issue that [appellant] had taken the deal on 10/06/09 because [he] was sincerely in fear for [his] life. [He] feared the Los Angeles County Sheriff Deputies were going to murder [him] if [he] had not accepted a deal;” and (2) he is not guilty of the charge of which he was convicted but only guilty of unlawful possession of a controlled substance (§ 11350).<sup>6</sup>

Penal Code section 1237.5 states the general rule that a defendant can appeal from a judgment of conviction upon a plea of guilty or nolo contendere only if the defendant files a statement under oath showing reasonable grounds going to the legality of the proceedings, and the trial court executes and files a certificate of probable cause for the appeal.<sup>7</sup> (*People v. Lloyd* (1998) 17 Cal.4th 658, 663.) Issues going to the validity of the

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<sup>5</sup> The Petition, case No. B225743, will be decided by separate order of this court.

<sup>6</sup> Appellant also raises a claim that prison staff members have interfered with his access to the prison law library. That issue is also raised and dealt with in the Petition and will be considered in connection with the Petition.

<sup>7</sup> Penal Code section 1237.5 states: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

plea require compliance with Penal Code section 1237.5. (*People v. Buttram* (2003) 30 Cal.4th 773, 781.) We need not address a certificate issue raised by a defendant on appeal from a judgment of conviction based on a guilty plea when a certificate of probable cause has not been obtained. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1100.)

Appellant's contention that he is not guilty of the crime to which he pled goes to the validity of the plea. Consequently, an appeal on that ground is impermissible without first obtaining a certificate of probable cause. Because appellant did not obtain one, we need not decide this issue.

Appellant's claim that his appellate attorney provided ineffective assistance of counsel for failing to raise the claim that he entered the plea agreement due to fear for his life is without merit. The standard for establishing ineffective assistance of counsel is well settled. Appellant "bears the burden of showing, first, that counsel's performance was deficient, falling below an objective standard of reasonableness under prevailing professional norms. Second, a defendant must establish that, absent counsel's error, it is reasonably probable that the verdict would have been more favorable to him." (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1052-1053; see also *Strickland v. Washington* (1984) 466 U.S. 668, 687, 694.) Appellant's counsel did not perform deficiently by failing to raise an issue that could not properly be raised without a certificate of probable cause.

In addition to our considering the issues submitted by appellant, we have examined the entire record and are satisfied that appellant's attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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